

Definition of Solid Waste Rule

Public Training

Hazardous Waste Program

May 16, 2023

Trainers:

Ellie Brown

Jay Collins

Zeb Bates

Agenda

- Federal Rule Overview
- Nitty Gritty
- Resources
- BREAK
- Questions and Discussion





Why is the definition of solid waste important?

EPA's Definition of Solid Waste Rule

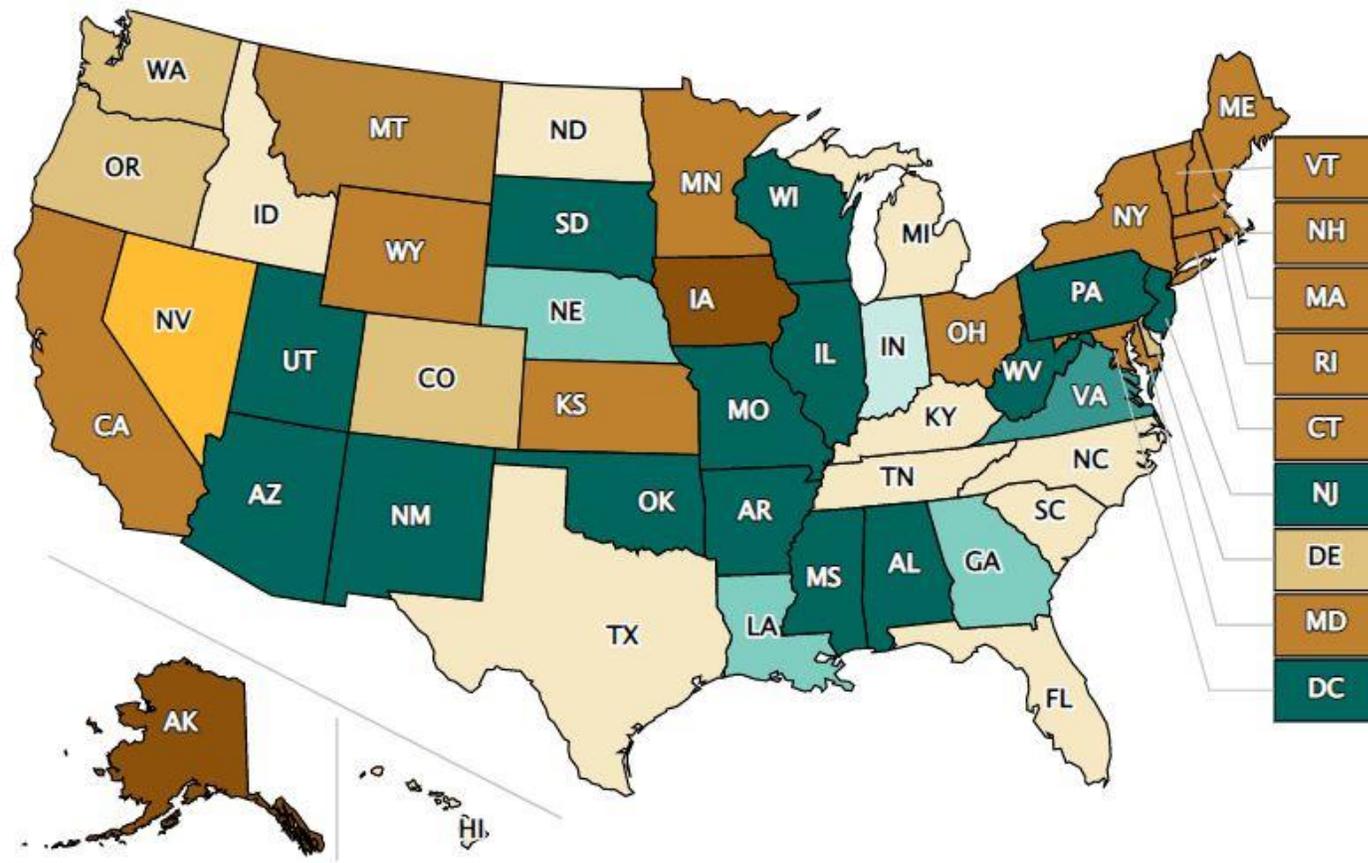
- Establishes:
 - Hazardous secondary material definitions
 - Exclusion for recycled HSM
 - Legitimacy criteria for recycling
 - Speculative accumulation rules
 - Sham recycling definition
- Updates:
 - Facility definition
 - Contained definition
 - Variance; includes non-waste determination and new requirements



Comparison of 2015 and 2018 Versions of Exclusion

	2015 Verified Recycler Exclusion	2018 Transfer-Based Exclusion
Generator	Must send their materials to either a RCRA permitted reclamation facility or to a facility with a “verified recycler variance”	Must send their materials to either a RCRA permitted reclamation facility or successfully perform a “reasonable efforts” audit on the unpermitted recycling facility
Intermediate and Reclamation Facility	Must either be RCRA permitted or must obtain a “verified recycler variance”	Must either be RCRA permitted or must pass a “reasonable efforts” environmental audit by the generator
Export	Not eligible	Eligible with notice and consent per 40 CFR Section 261.4(a)(25), among other requirements

Source: EPA: Implementation of DSW Exclusion



- Guam
- American Samoa
- Northern Mariana Islands
- Virgin Islands
- Puerto Rico

- Adopted entire 2018 rule
- Adopted entire 2015 rule
- Authorized by EPA for the entire 2015 rule
- Partially authorized by EPA (Not All Mandatory Parts) for the 2015 rule
- Authorized by EPA for the entire 2018 rule
- Adopted only mandatory portions of the DSW rule
- Neither adopted nor authorized
- Administered by EPA Region
- Authorized for only mandatory portions of the DSW rule



Oregon-only Modifications: Exclusions

Did not adopt these exclusions:

- Transfer-based exclusion (2018)
- Verified recycler exclusion (2015)

340-101-0004 Exclusions

(8) The provisions contained in 40 C.F.R 261.4(a)(23), (a)(24), (a)(25), and (a)(27) are deleted.

		Receiving State		
		No Exclusion	2015 Verified Recycler Exclusion	2018 Transfer-Based Exclusion
Generating State	No Exclusion	Shipments are Hazardous Waste	Shipments are Hazardous Waste	Shipments are Hazardous Waste
	2015 Verified Recycler Exclusion	Shipments are Excluded in Generator State but Hazardous Waste in Receiving State	Shipments are Excluded	Shipments are Excluded if they go to RCRA Permitted Recycler
	2018 Transfer-Based Exclusion	Shipments are Excluded in Generator State but Hazardous Waste in Receiving State	Shipments are Excluded if they go to RCRA Permitted Recycler <u>or</u> to a Verified Recycler on which the Generator Performs a Reasonable Efforts Audit	Shipments are Excluded

Source: EPA: Implementation of DSW Exclusion

Hazardous Secondary Material Definition

Definition ≠ exclusion

- Adoption of the definition was necessary to create a class of materials subject to new and more protective regulations.

40 CFR 260.10 Hazardous secondary material means a secondary material, e.g., spent material, by-product, or sludge, that, when discarded, would be identified as hazardous waste under part 261 of this chapter.

HSM Generator Definition

Aligns Oregon with federal rule

Secures Oregon authority for:

- Speculative accumulation
- HSM container management
- Sham recycling
- Legitimacy criteria

40 CFR 260.10 Hazardous secondary material generator: Any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of §261.2(a)(2)(ii) a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

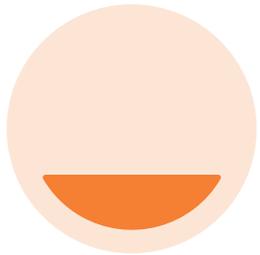


	Use constituting disposal (§261.2(c)(1))	Energy recovery/fuel (§261.2(c)(2))	Reclamation (§261.2(c)(3)), except as provided in §§261.4(a)(17), 261.4(a)(23), 261.4(a)(24) or 261.4(a)(27)	Speculative accumulation (§261.2(c)(4))
	1	2	3	4
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products (listed in 40 CFR 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products listed in 40 CFR 261.33	(*)	(*)	-	-
Scrap metal that is not excluded under 40 CFR 261.4(a)(13)	(*)	(*)	(*)	(*)

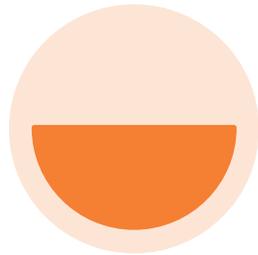
NOTE: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in §261.1.

HSM Legitimacy Criteria: Four Factors

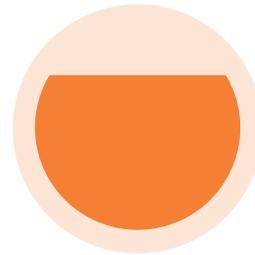
§ 260.43 Legitimate recycling of hazardous secondary materials.



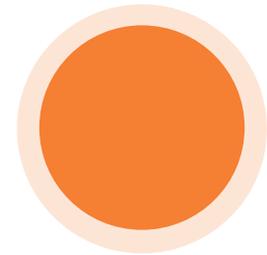
Provide a useful contribution



Produce a valuable product or intermediate



Managed as a valuable commodity



End product comparable to a legitimate product or intermediate

Records documenting compliance must be kept available for review by DEQ for three years past end of recycling activity.

Legitimacy Criteria Template

EPA released template in December 2022:

There is no specific format required for this documentation, but HSM generators may use this template to meet the requirements of 40 CFR section 261.4(a)(23)(ii)(E). This template can also be used to document a claim of legitimate recycling under any other recycling exclusion or exemption.

DEQ modified the federal template for use by Oregon generators. It can be found [here](#).

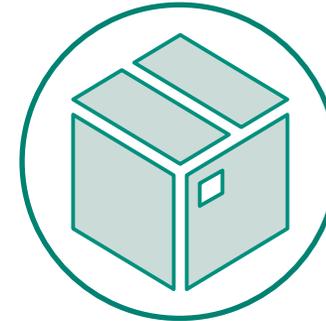
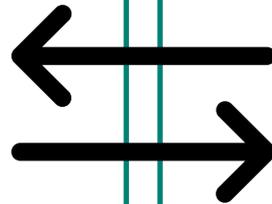
Hazardous Secondary Material Management



Not speculative accumulation if:

- Material is recyclable under existing exemptions and legitimacy criteria
- Stored protectively
- At least 75% of the material is recycled each calendar year

40 CFR 261.1(c)(8)



Stored material must be:

- Placed in a storage unit meeting the definition of contained
- Storage unit must have a label and an accumulation start date, or
- Tracked using an inventory system

Oregon-only Modifications: “Contained”

Modified definition of “contained” to align with pre-existing state regulations – no land-based units except at TSDFs

340-100-0010 Definitions

(g) “Contained” means stored in a container, tank or containment building in compliance with the generator standards of 40 C.F.R. 262, or at a permitted TSDF.

Oregon-only Modifications: HSM Management

- [340-100-0043](#) Legitimacy Criteria
- Modifies [40 CFR 260.43\(a\)\(3\)](#):

The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. ~~Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material,~~ The hazardous secondary material must be contained.

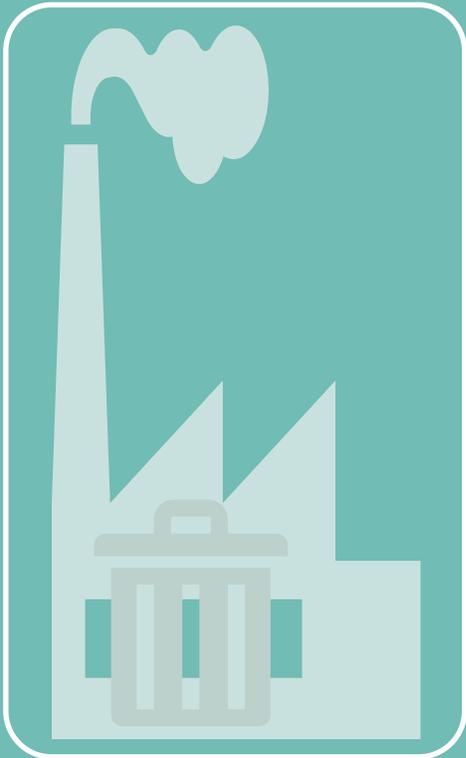
Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

Sham Recycling Definition

[40 CFR 261.2\(g\)](#) Failure to demonstrate compliance with legitimacy criteria or to manage HSM to standards.

- HSM is ineffective or only marginally effective for the claimed use
- Used in excess of the amount necessary
- Has hazardous constituents "along for the ride"
- Handled in a manner inconsistent with its use as a raw material or commercial product substitute

New Variance Option for Generators



Non-waste determination

- Limited to specific material categories
- Requires petitioners to:
 - Demonstrate why existing solid waste exclusions don't apply
 - Reapply if change in process or materials or every 10 years
 - Renotify every year with updated information

Oregon-only Modifications: Variance Reporting

340-100-0042 Variance Reporting

- (1) The provisions of this rule replace the provisions of 40 C.F.R. § 260.42(a) and § 260.42(a)(5).
- (2) The provisions of § 260.42(a)(5) are removed and reserved.
- (3) Facilities managing materials under a variance must send a notification prior to operating under the regulatory provisions and by March 1 of each year.

Regulation	Federal Citation	OAR Citation
HSM exclusions: verified recycler, transfer-based, export	40 CFR 261.4(a)(23) – (25) 40 CFR 261.4(a)(27)	Excluded at OAR 340-101-0004 Excluded at OAR 340-101-0004
Speculative accumulation and HSM management	40 CFR 261.1(c)(8)	Adopted at OAR 340-100-0002
Legitimacy criteria	40 CFR 260.43	Modified at OAR 340-100-0043
Variance requirements	40 CFR 260.30 – 260.31 40 CFR 260.33 – 260.34 40 CFR 260.42(a)	Adopted at OAR 340-100-0002 Adopted at OAR 340-100-0002 Modified at OAR 340-100-0042
Definition of contained	40 CFR 260.10	Modified at OAR 340-100-0010
Definition of HSM	40 CFR 260.10	Adopted at OAR 340-100-0002
Definition HSM generator	40 CFR 260.10	Adopted at OAR 340-100-0002
Definition of sham recycling	40 CFR 261.2(g)	Adopted at OAR 340-100-0002
Definition of facility	40 CFR 260.10	Adopted at OAR 340-100-0002

Resources

- [EPA Final Rule: 2018 Definition of Solid Waste, Response to Court Vacatur](#)
- [EPA Final Rule: 2015 Definition of Solid Waste](#)
- [McCoy and Associates White Paper](#)
- [Implementation of DSW Exclusion](#)
- [Criteria for the Definition of Solid Waste and Solid and Hazardous Waste Exclusions](#)
- [Legitimate Hazardous Waste Recycling Versus Sham Recycling](#)
- [DEQ DSW Overview Fact Sheet](#)
- [DEQ Documentation of Legitimate Recycling Form](#)



Discussion and Questions

